



SUMMARY OF WRITTEN SUBMISSIONS RECEIVED ON THE CRIMINAL LAW FORENSIC PROCEDURES AMENDMENT BILL [B9-2013]

The following submissions were received:

SUBMISSION NUMBER	ORGANISATION	SUMMARY OF SUBMISSION	COMMENT
DNA/01	Forensics 4 Africa		Supports the Bill
	Clause 1: Section 36A 1(e)(fG)	Section 1(e)(fG): sample take from ' <i>.....from the nail or from under the nail of a person.....</i> ' Submits that this sample cannot be regarded as a reference sample because when the victim scratches an assailant, the sample taken from under the nails or nail clippings might contain the DNA of the assailant and not of the victim and then that sample will be regarded as <i>evidence</i> and not as a reference sample. <u>Proposal:</u> It should be clear that the sample taken for under the nail or under the nail should not be used as a reference sample	
	Clause 1: Section 36A(1)(g)(a)	Section 1(g)(a): ' <i>...takes a buccal swab...in a designated area deemed suitable for such purpose...</i> ' This specific sentence should also make provision for the taking of a buccal swab at a roadblock as an example and not only at a designated area in a building. The value of a DNA database could be for example when someone is arrested for a driving offense and due to a comparative search on the DNA database linked this person to another serious offense. <u>Proposal:</u> A designated area as referred to in section 36A(5)(a) be defined as a designated inside or outside area deemed suitable for such purpose	
	Clause 2: Section 36D(a)	Section 36D(a): ' <i>...buccal swab be taken...person arrested for any offence referred to in Schedule 1</i> '. A Suspect is per definition an individual within the scope of the investigation by the South African Police Service who has not yet been cleared by the investigation of the South African Police Service. Not all suspects might be arrested. Therefore, when an individual is still a suspect but not arrested a comparative forensic DNA search on the DNA Database might not be allowed based on the stipulations of section.	



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		<p><u>Proposal:</u></p> <ul style="list-style-type: none"> • Creation of a SUSPECT Index. • The taking a buccal swab from a suspect in a criminal investigation must be included in Section 36E • Comparative search of any DNA profile against the SUSPECT Index • The same principles mentioned in section 15Q(a) could be applicable to determine when the suspect is cleared 	
	<p>Clause 6: Section 15G(7) – Establishment of a national forensic DNA database</p>	<p>The South African Police Services implemented DNA analysis as a crime fighting tool since 1998 and their current DNA database contains thousands of DNA profiles derived from suspects, arrestees, volunteers, (victims & laboratory personnel) and crimes samples. <u>Proposal:</u> DNA profiles on the current DNA Database (<i>repository</i>) be incorporated on the new national forensic DNA database and managed as determined by legislation.</p>	
	<p>Clause 6: Section 15L(1)(c)</p>	<p>Section 15L(1)(c): ‘The Elimination Index shall contain forensic DNA profiles...from any person...manufacturing of consumables’ The majority of DNA consumables are being purchased from companies abroad and not from local companies in South Africa. This will have a negative impact on the implementation of the Amendment Bill. <u>Proposal:</u> To add the words ‘<i>where possible</i>’ in the sentence of Section (c)</p>	
	<p>Clause 6: Section 15P(1) and Section 15Q(a)</p>	<p>Section 15P(1) ‘...Bodily sample taken...not relating to crime scene sample...be destroyed within 3 months...’ and Page 11: Section 15Q(a) ‘...DNA profiles in the Arrestee Index must be expunged within 3 years ...’ Questions whether this is a typing error regarding the 3 years and 3 months. <u>Proposal:</u></p> <ul style="list-style-type: none"> • The DNA profiles in the SUSPECT and the ARRESTEE Indexes must be destroyed within 3 months after been notified. • Furthermore, it is submitted that all DNA samples (DNA extract, Quantified & amplified DNA) of such an individual must ALSO be 	



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		destroyed.	
	Clause 6: Section 15Y(2)(f)	Oversight Board: Forensics4Africa employs DNA experts who will be able to contribute substantially to the proceedings of the Board and therefore requests that Forensics4Africa be considered to take up one of the two seats mentioned.	
	Private laboratories	<p>Private Forensic/Paternity laboratories in South Africa have the capacity to analyse approximately 600 000 reference samples. It is essential that the Arrestee Index (& SUSPECT Index) of the National Forensic DNA Database be populated as soon as possible in order to for South Africa to have an effective DNA database.</p> <p><u>Proposal:</u> To make provision for private laboratories in South Africa to assist the South African Police Service to determine the DNA profile of arrestees and suspects (NOT crime samples) for a period of at least 5 years which could be reviewed every 5 years until the South African Police Service have established the required capacity. These laboratories should comply with the same requirements and follow the same procedures as the South African Police Services and the South African Police Service or the National Forensic Oversight Board could oversee their functions.</p>	
	Publishing of data	The effect of the National Forensic DNA Database on crime investigations should be published in the media on an annual basis.	
	Implementation	The Portfolio committee on Police should further oversee a detailed implementation plan of the South African Police Service regarding <i>inter alia</i> the taking of reference samples of arrestees	
DNA/02	SA Society of Human Genetics		Supports the Bill
	Clause 6: Section 15Y Independence of the Forensic	It is recommended that the independence of the FSL from police and prosecutor should be considered in terms of the National Forensic Oversight Board in order to support the integrity of the criminal justice system, as is the case in the United Kingdom.	



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	Science laboratories		
	Clause 6: Section 15G(5);15Y and 15X Data security and access policies to be clarified.	This new version of the Bill states that no medical, historical, behavioural information or information about appearance will be included in the database. Presumably, a unique identifier will be used for each sample, which will connect somehow to personal identification through an RSA ID number. What will be the personal identification for illegal immigrants or refugees? In addition, the issues of ethical and privacy compliance with respect to data security and access should be monitored and discussed by the board.	
	Scope of the use of the data to be specified.	Submits that the organisation raised the fact that in the future it may be possible to use DNA data to predict the appearance of a person e.g. eye, hair and skin colour. We asked whether this would be permissible in the case of identification of unidentified human remains, which may prove useful.	
	Clause 6: Section 15O; 15T and 15Y Quality management	In our 2009 and 2012 correspondence, we raised several concerns about quality management (National Forensic Laboratory certification/accreditation, training of personnel, chain of custody, turnaround times, etc.). We hope more emphasis is given to these important issues by both the National Forensic Oversight Board (tasked with proposing minimum quality standards) and the National Commissioner (who shall issue national instructions, ensure security of the database and ensure adequate training and regulations).	
	Funding	Adequate funding to ensure that the activities proposed in this Bill can be fully implemented	
DNA/03	Forensic DNA Consultants		Support the Bill
	Clause 6: Section 15G(3) Inclusion of a	<ul style="list-style-type: none"> There is no provision specifically made for where profiles for missing persons and unidentified human remains should be stored, or which retention or expungement criteria are set for those profiles. 	



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	Missing and Unidentified Persons Index	<ul style="list-style-type: none"> Proposes a separate index, 'Missing and Unidentified Persons Index' to be established. This proposed index should also have <i>specific profile retention and expungement criteria</i>. It is suggested that the profiles in this index be retained on the database indefinitely or until such a time as the person has been found or identified. As the sample quantity may be limited and the quality may be poor, any samples collected should ideally be retained as evidence in a missing person's case for as long as possible. 	
	Missing and unidentified persons: Private laboratory	<ul style="list-style-type: none"> In order for an investigation into an unidentified body to proceed further with the help of DNA profiling and analysis, it is suggested that an accredited third party laboratory be tasked with typing these samples. The reference profiles that are generated by that laboratory can then be securely uploaded to the relevant index of the NFDD. This will also serve to allow the Forensic Science Laboratory (FSL) to focus attention and resources on the processing and analysis of the many crime scene samples that it receives. Ideally, the Bill should put in place a provision for reference profiles of missing persons and unidentified persons to be added to the 'Missing and unidentified persons' index and specify that an effective process of identifying unidentified and missing individuals should be established 	
	Making provision for Familial searches to take place	<ul style="list-style-type: none"> The effectiveness of a DNA database stems from its ability to provide investigative leads in cases of a criminal nature or for the identification of missing persons. This is further enhanced by the innate ability of a database system to relax the search stringency criteria of DNA profiles within the database and thus allow partial matches to be discovered. For both criminal and missing person scenarios, this can provide valuable information in the form of <i>possible familial associations</i> to the suspect or the missing or unidentified individual. It must be noted that this <i>must involve informed consent</i> and the family 	



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		<p>members must be made fully aware of the possible implications of providing such a sample as it may ultimately lead to an inclusion and further investigation. These samples are submitted to the volunteer index, as no arrests would have been made yet. Also, for purposes of following up on familial searches, the related individuals are under no obligation to provide this reference sample if they do not wish to.</p>	
	<p>Clause 6: Section 15N International DNA Information Exchange</p>	<ul style="list-style-type: none"> • Allowing for requests for information on DNA profiles submitted by international agencies is necessary in order to promote cross-border crime prevention and allow for more effective identification of missing persons and victims of crimes such as those involved in <i>human trafficking</i>. • The current situation, however, is that the database held by the SAPS FSL was at one point uploaded to the Interpol DNA Gateway database and is very likely still held there. This is in contrast to regulations made by the Bill, which states that a DNA profile must be received from the requester and then, subject to the Act and other applicable laws, the outcome of the comparative search may be reported to the requester. • It is suggested that the SAPS make a formal request to Interpol to revoke those DNA profiles and any associated information uploaded. This will ensure that any future requests from Interpol or other recognised agency be directed to the authorised officer and be carried out under their control. This will also ensure that there are no conflicts with the regulations laid down by the Bill, which could be challenged in court in future if this is not done. 	
	<p>Clause 6: Section 15Y Independence of the DNA Database</p>	<ul style="list-style-type: none"> • Independence is a serious concern in the South African context, given that the DNA database is administered solely by the SAPS. This provides the SAPS with an unrestricted ability to determine policies such as the <i>search criteria</i> on the database (when the database can be searched and against which other profiles), <i>reporting rules</i> (when matches or hits on the database are reported and to whom they are 	



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		<p>reported), <i>stringency of search criteria</i> (whether partial profile hits generated, allowing for familial inferences to be made) and <i>profile retention and expungement criteria</i> (whether profiles are being retained indefinitely or if there procedures in place to remove profiles after specific time periods or events).</p> <ul style="list-style-type: none"> • For this reason, it is recommended that the DNA database established in terms of this Bill be administered and maintained by an external, independent body such as the <i>National Forensic Oversight Board</i> that is to be set up in terms of this Bill. 	
	<p>Clause 6: Section 15Y Establishment of the National Forensic Oversight Board</p>	<ul style="list-style-type: none"> • The appointment of this Board should be made the responsibility of the Minister of Justice and Constitutional Development, and <i>not</i> of the Minister of Police. It is essential that this Board remain as independent as possible, even more so than the laboratory, and thus it should not be aligned solely with the Ministry of Police. • In order for this Board to have any true <i>value</i> as an independent oversight body, it is crucial that the majority of the Board representatives be those individuals with no stake in the activities of the Forensic Science Laboratory (FSL) or in the administration of the NFDD. In addition to those representatives mentioned in the Bill, the Board should also be comprised of individuals from various independent entities with a broad spectrum of interests allied to forensic science, and in particular, to DNA profiling. • Such individuals may include local independent forensic scientists, who have the necessary knowledge and understanding of the DNA process in the context of the justice system as a whole; those academic/ university members who are involved with training programmes of a forensic science nature and who are experts in forensic DNA related fields such as population genetics and statistics; individuals representing legal professionals from both the prosecution (NPA) and defence as well as additional members of non- 	



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		governmental organisations such as those involved with victim support.	
	Accreditation and the Representation of the State's Forensic Biology Laboratory	<ul style="list-style-type: none"> • The SAPS' Forensic Science Laboratory (FSL) is currently not accredited to international guidelines (being ISO17025). Accreditation is an <i>international standard</i> that forensic laboratories employ as a minimum requirement to assure the quality of the work performed by that laboratory. The FSL needs to be accountable to these international standards, which will allow for it to be audited annually and for its procedures and management to be evaluated by an independent, external body. • In light of this, the legislation should make provision for a transitioning of the laboratory towards accreditation. This should allow the laboratory <i>reasonable time</i> to become accredited, and thereafter allow for forensic DNA testing to only be done by accredited laboratories in future. This should apply to <i>all laboratories</i> that are and will be involved in forensic DNA profiling. • In the event that the laboratory does not become accredited, the <i>only viable alternative measure</i> to ensure that the laboratory is producing valid and quality results is for the laboratory to be <i>audited annually</i> by an external and independent technical advisory committee. • The fact that there are no significant independent (non-SAPS) forensic services available to the South African public indicates the serious lack of balance in providing assurance against prosecutorial bias. In order to avoid tendencies of prosecution bias, this dependency of forensic services in South Africa on the SAPS and the close association of the NFDD with the FSL and the SAPS should be revisited, as it is not in the interest of the unbiased scientific practices in service to the people of South Africa. 	
	Private laboratories	<ul style="list-style-type: none"> • Provision for ISO17025 accredited private laboratories to conduct reference sample testing Provision should be made in the Bill for the 	



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		processing and analysis of reference DNA samples to be done by <i>external accredited</i> laboratories.	
DNA/04	<p>Forensic Genetics Policy Initiatives</p> <p>Clause 2: Section 36D and 36E</p> <p>Collection practices</p>	<p>The greatest privacy and human rights concerns attendant to the current version of this bill surround the expansive categories of persons whose DNA is to be collected and added to the database. The current draft of the Bill in Section 36D lays out two separate lists of categories of persons. One list is limited to individuals associated with Schedule 1 offenses and the second list contemplates individuals associated with any offense. There is no clear explanation as to why there are separate lists but the result is to collect the DNA of nearly anyone in South Africa who comes into contact with the criminal justice system.</p> <p>Convicted: Collection of DNA from individuals convicted of violent crimes, such as murder and rape, crimes, which have both an increased likelihood of repeat offense, and DNA evidence left at the crime scene are generally accepted by most countries as sufficient justification for including such populations on a DNA database. Yet there is a significant difference between offenders who meet the above criteria and offenders who have committed non-violent crimes for which DNA evidence is not relevant and minor crimes that do not include custodial sentences.</p> <p>It is unclear from an analysis of this bill exactly which criminal offences it applies to since the Schedule of offenses referred to in the bill does not appear publicly available but 36D(2) appears to expand the purview of the bill to any offense.</p> <p>It is fair to conclude from the bill's language that there has been insufficient attention paid to ensuring that the categories of offenses to be included within the purview of this bill are carefully chosen. They appear to</p>	



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		<p>be expansive and the Minister is given unusually broad authority to expand such categories even further without legislative approval. Most countries that have launched national DNA databases have begun with a limited set of specified offences and expanded deliberately with legislative oversight.</p> <p>Pre-Convicted: The bill sets out to include a wide variety of pre-convicted categories of persons including individuals arrested, on bail or summonsed for an offense, and those persons for whom reasonable grounds exist to believe they or one or more of the persons in that group (i.e. individuals with no suspicion attached at all) has committed either a Schedule 1 offense or any offense whatsoever and that the sample will be of value in including or excluding one or more of such persons as the perpetrator of the offense.</p> <p>Collecting the DNA of individuals yet to be convicted of a crime, many of whom will never be convicted of a crime and some of whom are known to be innocent at the time but whose DNA is being collected because they are part of a suspicious group is a <u>serious intrusion into the privacy and human rights of the public</u>. It obviates the state's primary restraints on search and seizure and its responsibility to prove guilt. The amount of law enforcement discretion to the decision to stop and arrest a suspect additionally offers law enforcement substantial discretion in determining whose DNA to collect. Such provisions open up the opportunity for law enforcement to engage in "DNA dragnets", which necessarily entail the collection of DNA from innocent persons who happen to be in the wrong place at the wrong time.</p> <p>Moreover, the collection of DNA upon arrest is not for the purposes of identification of an individual. The individual will necessarily already have been identified at the time DNA is collected. Rather, the taking of DNA</p>	



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		<p>upon arrest is to investigate individuals for crimes unrelated to the crime for which they were even arrested. Because only a fraction of those who are arrested are ultimately charged and convicted, however, this practice necessarily will permit the government to collect DNA from and conduct DNA based surveillance on innocent South African citizens.</p> <p>Volunteer: Volunteers who consent to the collection of their DNA should have its use limited to a specified investigation and is not necessary to have it entered on a database to ensure it can be used for this purpose. Furthermore, the volunteer index contemplates the inclusion of children with the consent of the parent and could be in conflict with the principle that children shall have the right to participate in decision making involving them as contemplated by the Child Justice Act.</p>	
	<p>Clause 6: Section 15G Establishment of National Forensic DNA Database</p>	<p>The bill does a generally good job of separating the categories of included persons into indices, rather than mixing such categories of individuals together. However, the bill has no provisions for ensuring that such indices remain separate with separate access and use rules. This is particularly of concern, as there are categories of persons, such as missing persons, who are not part of any criminal investigations.</p>	
	<p>Clause 6: Section 15P</p>	<p>The bill does recognize the robust information value of biological samples and the potential for their misuse and it does require that such samples are destroyed within three months after a profile is created and uploaded to the NFDD. However, there is no timeliness requirement as to creating the profile in the first place. Backlogs are often a very serious problem with DNA database maintenance, therefore what might appear on its face to be a timely privacy protective requirement could very easily turn into a longer-term collection issue and raise serious privacy concerns.</p>	
	<p>Clause 6: Section 15Q</p>	<p>The current bill allows the state to retain a DNA profile of an individual for up to three years even after the case against them has concluded without</p>	



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		<p>a finding of guilt. Moreover, there are no provisions for ensuring the timeliness of notification to an authorized officer to begin this period. Consequently, the current bill allows for the retention of the DNA of innocent persons long past any reasonable time for expunging their records and represents an unwarranted intrusion into the private lives of innocent persons.</p> <p>Furthermore, the DNA profiles of all categories of convicted persons are retained indefinitely with no retention distinction between serious, violent crimes and minor non-violent crimes. The permanent retention of all offender profiles without distinction raises serious questions as to the power of the state to maintain control over an individual even after they have met the burdens of their conviction.</p>	
	<p>Clause 6: Section 15Y National Forensic Oversight Board</p>	<p>To ensure privacy and human rights, there must be adequate measures to ensure oversight, regulation, quality assurance and accreditation of the system. The collection and processing of DNA in laboratories, in particular, is a system prone to contamination, malfeasance and error without sufficient protections. A custodian plays a crucial role in ensuring the accuracy and security of the system. The bill does a good job of creating such an authority.</p> <p>However, the National Forensic Oversight Board does not include any categories of members who can be considered watchdogs on behalf of the public. No members of legal defence or human rights associations are included; rather the Board is required to invite the SA Human Rights Commission to participate. From its inception, or at any time, the Human Rights Commission could decline to participate or participate in a limited degree and their decision-making authority in either scenario is unclear. The inclusion of NGOs without further refinement of their description does not alleviate this concern, as NGOs unrelated to ensuring the rights of the</p>	



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		<p>accused and convicted could be included.</p> <p>For the public to trust the Board in representing the public's interest, its makeup must include permanent representatives of bodies devoted to ensuring that individuals that come into contact with the tenets of this bill and law enforcement generally have their rights protected.</p>	
	Familial Searching	<p>The bill does not address familial searching, which is the deliberate search of a DNA database conducted for the intended purpose of potentially identifying close biological relatives to the unknown forensic profile obtained from crime scene evidence. This practice has a low success rate and raises serious privacy and human rights concerns as it necessarily involves searches of individuals that law enforcement knows to be innocent. The general language of the bill related to reasonable uses of the database would appear to allow such searches.</p>	
	Post Conviction DNA Access/ Exoneration	<p>One of the most often repeated arguments by supporters of this bill is the power of DNA to exonerate. Indeed the most powerful uses of DNA can be for exonerating those individuals who have been wrongly convicted of a crime. However, no part of this bill is devoted to ensuring post conviction access to one's own DNA for exoneration purposes. The widely heralded recent launch of a SA Innocence Project, some of whose biggest supporters are proponents of the bill, makes clear the need for strong post conviction DNA access provisions. The lack of such provisions in this bill is a serious omission with profound human rights implications.</p>	
	Oversight	<p>While the oversight powers given to the Board, Minister and National Commissioner with regards to oversight of labs, privacy and security and other necessary features to ensure the integrity of the forensic system are broad, there is a glaring lack of specificity to ensure the highest standards and oversight are met.</p>	
	Financial Analysis	<p>The financial costs of creating and maintaining such expansive DNA collection practices as well as a national DNA database are quite high and,</p>	



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		if underfunded, could result in serious miscarriages of justice. Even well funded databases and practices in many countries have had serious incidents of mistake and error and significant backlogs. It does not appear that any financial analysis of the bill has taken place.	
	Best practices	The submission also provides a best practice analysis.	
DNA/05	Vanessa Lynch DNA Project	Submitted a petition in support of the Bill with 8529 signatures.	Support the Bill Request to make oral presentation
	Clause 1: Section 36A1(bA)	In the definition of a 'bodily sample' – add the word 'biological' before 'sample' in the definition: '...means any type of biological sample taken from a person...etc'.	
	Clause 1: Section 36A1(fC)	A forensic DNA profile stored on the DNA Database is a sequence of letters and numbers from the non-coded regions of a person's DNA, which ensures that no genetic disposition or other distinguishing feature may be read from that profile other than gender. It is therefore submitted that this fact should be included in the definition of 'forensic DNA analysis' as follows – see addition in bold italics: 'forensic DNA analysis' means the analysis of sections of the non-coding regions of the deoxyribonucleic acid of a bodily sample to determine the forensic DNA profile:...etc'	
	Clause 2: Section 36D(7)	The use of the words 'must ensure' is not as strong as 'must' or shall' It is important that the taking of convicted offenders' DNA samples is done retrospectively so this clause should read: <i>(7) Subject to subsection (6)(a) and (d), the head of the Correctional Centre or Remand Detention Facility in which the person was or is incarcerated, or his or her delegate, shall (must) take a buccal sample or shall (must) cause the taking of any other bodily sample by a registered medical practitioner or registered nurse of any person who is serving a sentence of imprisonment for any offence at the time of the coming into operation of this act or on admission to a Correctional Centre or Remand Detention Facility or before the release of such person from the</i>	



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		<i>Correctional Centre or Remand Detention Facility, if it had not already been taken upon his or her arrest.</i>	
	Clause 6: Section 15P(1)	This paragraph does not make sense in its current form – we suggest that the words ‘which is’ are used to replace ‘or’ in order to ensure that the paragraph has its intended meaning. ‘(1) Any bodily sample taken from a person and not relating to a crime scene sample ‘which is’ used to populate the NFDD...etc’	
	Clause 6: Section 15P(3)	Suggests that 15P(3) must be amended to read: “(3) The authorised officer must ensure the safe storage of crime scene samples” <i>‘which will be held indefinitely’.</i>	
	Clause 6 : Section 15Q(a)	Consider changing this period to 6 years, which must be increased to 12 years if the person is rearrested during that 6-year period. Refer to our written submission for our motivation as to why this period should be an extended to a minimum of 6 years as opposed to 3 years as provided in the Bill. In addition it is submitted that this paragraph should read that a forensic profile in the arrestee index may be expunged on application by the arrestee but not before 6 years has expired after the events listed in (a)(i)-(vi). This will alleviate the administrative burden placed on the FSL by constantly having to flag different profiles for expungement after so many different events for removal. In the event that a person is re-arrested on an unrelated charge during that 6-year period, the profile shall be held for 12 years on the same conditions.	
	Clause 6 : Section 15Q(a)	If matches are found during this time, can they be used? This is the reason for retention over this period, e.g., if a person is out on bail and commits another offence, their profile could be matched to that additional offence if a match is found during this time. Ensure that their profile is not rendered inadmissible if it is subsequently removed after 3 years due to a non-conviction on the first offence. Consider specifying that comparative	



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		searches as against that profile will be able to be conducted during this 3-year period, regardless of the fact that it may be subsequently removed due to a non-conviction.	
	Clause 6: Section 15R	Consider including a provision, which refers to the Custodian of the DNA Database. Who is the Custodian of the DNA Database and what will that entail?	
	Clause 6: Section 15U	Training – please refer to Annexure “C” attached to this submission, which provides full details in respect of national forensic awareness training, which is already taking place to support the implementation of the NFDD.	
	Clause 6: Section 15W	Parliamentary oversight requires obligatory registration or feedback by the FSL or the Custodian of the DNA Database on the use of reported matches by the police and or the NPA – if this is not done it is very difficult to measure the effectiveness of the DNA Database afterwards. Because DNA-databases have a very important but also very delicate role in society, the custodian of a DNA-database should develop tools to make objective information about the DNA-database available to politicians, the public and the media. The use of a public website is ideal to achieve this.	
	Clause 6 : Section 15Y(2)(f)	It is important that the National Forensic Oversight Board (NFOB) is adequately represented by non-government organisations that have an interest in Forensic DNA analysis and law enforcement. Without public participation this becomes a purely government body — it is not then truly an oversight body as it is made up of only government departments overseeing another government department. The role of NGO’s in this area is critical to create balance and by saying ‘in the opinion of the chairperson’ it means there exists the possibility that board may consider it unnecessary to involve NGO’s. [who is the chairperson here anyway?] This provision should therefore not be restricted to two people to represent all NGO’s nor should it be at the discretion of the chairperson of the committee. The section (2)(f) of the paragraph should accordingly read: <i>Representatives from non-government organisations that have an interest</i>	



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		<p><i>in Forensic DNA analysis and or law enforcement.</i></p> <p>Question: Why is the Division: Forensic Sciences not represented on the NFOB? It is suggested that there should be an ethical body represented on the Oversight Board. Other suggestions for inclusion in the NFOB are:</p> <ul style="list-style-type: none"> - a representative from the SA Society of Human Genetics; -any person who may be co-opted by the NFOB (this provides scope to include representatives which may be considered to be useful but have not been specified in the Bill) - University Forensic Labs; - a representative from a law society/bar council; 	
	Clause 6: Section 15Y(6) Additional para. (h)	Include additional function to the roles of the Oversight Board: <i>(h) Review the annual report of the National Commissioner</i>	
	Clause 6: Section 15Y(6) Additional para. (i)	Include second additional function to the roles of the Oversight Board: <i>(i) Review the use of reported matches by the National Commissioner and the National Prosecuting Authority to measure the effectiveness of the DNA Database.</i>	
	Clause 6 : Section 15Y(6) Additional para. (j)	Include third additional function to the roles of the Oversight Board: <i>(j) Establish performance parameters for the DNA Database, which must be made publicly available.</i>	
	General Comment <i>(See comment regarding S15R)</i>	The Custodian of the Database is not mentioned nor defined. There should also be a provision separating the powers of the custodian of the database from the DNA Forensic Analysis Biology Unit. Presently the DNA Database is not part of the Biology Unit nor is it part of the FSL. The NFDD will fall under the Quality Management Division of the Forensic Services Division and therefore whilst it is separate it will enhance public confidence to specify this fact.	
	General Comment Section 15T	The National Instructions must be clear on which police officials are authorised to take buccal samples i.e. rank and /or Detective and it should	



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		<p>be stated that they should carry identification with them that identifies them as a trained official for this purpose?</p> <p>The training of each Detective must also be captured on a Training Administration System and each person must be given a unique number, which he/she also needs to provide and complete on the form with the details of the sample, which is sent to the FSL for analysis.</p> <p>Also: a crime scene examiner' is excluded from taking a buccal sample from an arrestee or convicted offender. As such a crime scene examiner should be defined in the National Instructions.</p>	
DNA/06	Carolyn Hancock	Prepared to do oral briefing to the Committee on the scientific principles behind forensic DNA profiling	Supports the Bill Requests oral briefing
DNA/07	SABRIC	SABRIC does not share the opinion of the DNA Project that the obligation to obtain DNA samples should be extended beyond suspects arrested for schedule 1 offences.	Support the Bill
	Clause 1: Section 36A1(b)(iii)	The definition of "authorised person" under paragraph (iii) includes the proviso that the registered nurse or medical practitioner must be providing services to the Department of Correctional Services whilst this condition is not included in the definition of the proposed Section 15E to the South Africa Police Services Act, 1995. This creates the impression that bodily samples may only be taken by a nurse or medical practitioner providing services to the Department of Correctional Services, whilst this clearly not the intent of the Bill.	
	Clause 1: Section 36A1(d) of the Bill:	The definition of "comparative search", through the inclusion of "by an authorised person of" creates the impression that comparative searches could be executed by any "authorised person" alternatively, that only an "authorised person" would be allowed to perform comparative searches. The intent is probably to indicate that a person authorised thereto, may perform comparative searches but since "authorised person" is specifically	



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		defined in the Bill, this creates confusion.	
	Clause 6: Section 15H	Proposed Section 15H to the South African Police Services Act, 1995: subsection (b) therefore, with respect, does not read well and the wording should be reconsidered. It currently reads "...on or in the body of the victim or suspect which may be used to identify DNA left by that person who was in contact with that person during the commission of the offence".	
	Clause 6: Section 15J	To allow for any DNA profile of a sample taken under any power conferred by s36D of the CPA to be included under the Offenders Index firstly carries the risk of duplication with the Arrestee Index and also creates the risk of the DNA profile belonging to an "innocent" arrested person to be included into the Offender Index.	
	Clause 6: Section 15K and 15L	The submission presumes that the DNA profile of a sample taken from an innocent party, e.g. the DNA sample of the husband of a rape victim, will be contained in the Volunteer Index (as opposed to the Elimination Index) notwithstanding the fact that the profile will actually serve to eliminate the husband as a suspect.	
DNA/08	Legal Aid SA	The DNA Database can never replace good quality detective work and proper crime scene investigation	Support the Bill
	Clause 2: Section 36D	<p>The insertion of a revised Clause 2 in the current Bill (B9 of 2013) provides for the insertion of a new section 36D in the Criminal Procedure Act, 1977. This is a vast improvement to the previously mentioned provision contained in Bill 2 of 2009.</p> <p>This improvement is welcomed, as there is a differentiation between offenders who have been convicted of offences justifying custodial sentences (Offences listed in Schedule 1) and those who have been convicted of minor offences that only justify a warning, fine, suspended sentence or non-custodial sentence.</p> <p>There is still a concern relating to the all-inclusiveness of reconvicted</p>	



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		<p>persons, who are constitutionally presumed to be innocent, as this remains an unequal and arbitrary invasion of an individual's privacy.</p> <p>The all-inclusiveness of pre-convicted persons remains an unequal and arbitrary invasion of an individual's privacy, especially as an accused person is presumed to be innocent until convicted by a competent court. It is therefore proposed that the taking of samples for DNA testing should be limited to persons accused of Schedule 1 offences.</p>	
	<p>Clause 6: Section 15P and 15Q Retention, storage and expungement of forensic DNA samples and profiles</p>	<ul style="list-style-type: none"> • The three-year retention period for the profile is welcomed as this conforms to international best practice for the retention of such profiles. • S15Q: the forensic DNA profiles from crime scene samples as well as the forensic DNA profiles in the Elimination Index shall be stored indefinitely. In principle, the retention of DNA samples and profiles remains a breach of the right to privacy as contained in section 14 of the Constitution. A DNA sample and to a lesser degree, a DNA profile contain information regarding a person's health including life expectancy, ethnic markers, familial markers which could be used to infringe the rights of persons, other than those who have been convicted of Schedule 1 Offences. • It is proposed that where charges are withdrawn against children or where a child is acquitted, any DNA sample and profiles must be destroyed within three months. The indefinite detention of DNA samples and profiles of convicted minors is contrary to the provisions of the Child Justice Act. It is suggested that these should be removed within 3 years of the expungement of the conviction. • Failure to remove DNA samples or profiles from the DNA database does not lead to any specific sanctions. It is submitted that neglecting to remove samples or profiles from the DNA database should be penalised. 	



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DNA/09	Jes Foord Foundation	<p>Support the provision that trained Police Officers be allowed to take non-intimate DNA samples from arrestees and convicted offenders. This is done by a specially trained police officer and is quickly and easily obtained.</p> <p>The “invasiveness” of the methods of obtaining DNA samples (rubbing a swab around the person’s mouth, or obtaining a drop or two of blood from a pin-prick to a finger), are no different to having a breathalyser taken on suspicion of drunken driving.</p>	Supports Bill
	Clause 1: Section 36A(b)(ii)		
	Clause 2: Section 36D(1) and 36D(7)	<p>The Bill makes it mandatory to take DNA samples from suspects at the time of arrest and I believe that it should extend to all arrestees and not just those arrested for schedule one offences.</p> <p>It is also crucial that all convicted offenders DNA samples are taken retrospectively and before their release from prison. This will ensure that an offender is not released from prison when in fact his DNA is a match for unsolved rape cases that are out there. 50% of child rapists are repeat offenders. Catching them before they are released is a hugely effective tool of prevention.</p>	
	Clause 6: Section 15Y	Suggests that more non-governmental organisations be included on this Oversight Committee and that the total number of such members not be restricted to two people.	
DNA/10	Diana Thomson	The Bill allows evidence to be collected if it is left behind at the crime scene.	Supports Bill
DNA/11	Wendy Kenyon	Submits that DNA evidence is crucial and that South Africa is behind the rest of the world when it comes to the use of DNA evidence.	Supports Bill
DNA/12	Ashley Jantjies	Submission supports the DNA Project and submitted similar issues as Susan Lynch in terms of training for first respondents and the balance	Supports Bill



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		struck between the rights of citizens and the right of Government to solve crime.	
DNA/13	Nakita Verkijk	Submission supports the issues raised by the DNA Project.	Supports Bill
DNA/14	SM Lorge	Submission supports the issues raised by the DNA Project.	Supports Bill
DNA/15	Brendan Burgess	<ul style="list-style-type: none"> • Raised concern about capacity of the SAPS to effectively implement the proposed legislation. • Concerned about the extra pressure put on the SAPS FSL Biology Units to establish a DNA Database and that this pressure will translate in a further pressure put on cases before court. • Suggests that the DNA Database be located within the Department of Health and only accessed by the SAPS for investigative purposes. 	This submission was made by a SAPS member working in the Pretoria FSL Biology Unit in his personal capacity.
DNA/16	Brandon Golding CT (CBD) Community Policing Forum (CPF)	An expanded DNA Data Base, together with training and correct equipment for Detectives, will ensure that suspects are efficiently screened with minimal delay. Allowing SAPS to cross correlate a given DNA profile against the crime scene profiles collected from other crime scenes will quickly identify a serial offender. By ensuring that unambiguous forensic evidence such as DNA can be used in criminal cases, we will without doubt see a significant improvement in conviction rates amongst repeat offenders. The net result will certainly be an overall reduction in crime statistics, whilst simultaneously affecting positively on the efficacy and resource efficiency of both SAPS and the NPA.	Supports the Bill
DNA/17	Sean Davidson (DPV Watch)	The CPF works closely with the SAPS and have seen numerous cases lost due to insufficient evidence. The Bill proposes a robust legal framework to allow DNA to be used as forensic evidence and to establish a DNA database in South Africa. Further submits that the Bill will deal effectively with repeat offenders. The legislation is long overdue and will bring SA in line with other countries currently utilising DNA forensics.	Supports Bill
DNA/18	Dr. Anthony Lelliott (University of the	The passing of this Bill into law, without any amendments, will help identify serial offenders at an early stage of the investigation as well as link perpetrators to their crimes through an objective and reliable science. It	Supports the Bill



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	Witwatersrand)	will also ensure that the innocent are exonerated. This has happened overseas where it has been extensively used.	
DNA/19	Helen May	The DNA Bill will not only assist in linking perpetrators to crimes; it will significantly shorten the legal processes in the legal system, which is already severely overloaded, with delays which end up exonerating criminals due to their rights to a speedy trial.	Supports the Bill
DNA/20	Polo Mokomu	MSc Forensic Genetics student at the University of the Free State. As part of his Masters Degree studies, he is researching public opinion on the use of DNA and DNA databases in criminal investigations. The preliminary study and the results indicate support of the database. All respondents believe that there should be an effective DNA database in the RSA and that having a profile will deter people from committing crimes. The respondents were also willing to support government funding towards the use of DNA in criminal investigations.	Supports the Bill
DNA/21	Tony Bullock, Fish Hoek Community Police Forum Clause 2: Section 36D	Submission endorses the provision that makes it mandatory to take DNA samples from suspects at the time of arrest and believe that it should extend to all arrestees and not just those arrested for schedule one offence. It is believed the inclusion of a DNA profile into the DNA Database at the time of arrest is important because: (1) it quickly includes or excludes a suspect from the investigation; (2) it would allow the police to quickly identify a serial offender; and (3) it would allow the innocent to be exonerated. The existing DNA Database in South Africa, which has through default, evolved under the governance of the Criminal Procedure Act of 1977, is a wholly inadequate tool for regulating the use and retention of DNA profiles on a National DNA Database. The new Bill ensures that the future of the current DNA Database is expanded and managed in a regulated and appropriate manner.	Supports the Bill
DNA/22	Kamogelo Lebeko (UCT Division of Human Genetics)	Passing of the bill into legislation will provide a criminal intelligence tool that will effectively trace the involvement of individuals to a crime or crime scene. It provides a procedure whereby every crime scene will be	Supports the Bill



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		<p>processed for DNA and stored on a National DNA Database until such a time that a positive match can be made to a suspect (or reference sample) which will be obtained at the time of that suspect's arrest. The expansion of the National DNA Database will result in serial rapists being caught much sooner as their profile will show up in multiple crime scenes and upon an arrest, should they not already be in the reference index, they can be charged and convicted and thereby held accountable for their crimes giving rest to their victims and their families.</p>	
DNA/23	<p>Karin Ehlers (University of the Free State) Clause 1: Section 36A(5)</p>	<p>Questions the reference made to a 'designated area' in terms of the rationale for taking samples in a separately designated area. Further questions whether this procedure will contaminate the environment. In addition, whether an authorised person first has to go look for a designated area before you can take a sample. In addition, questions what the designated area contribute to the reliability of the sample that other places would not have.</p>	Supports the Bill
DNA/24	<p>Timothy Spracklen</p>	<p>Agrees with the collection of DNA samples from arrestees compulsory, as this is essential to ensure the expansion of the reference index of the database. The use of buccal swabs is a relatively non-invasive method of obtaining biological samples from suspects, and further do not believe that this violates any issues of individual privacy. The inclusion of already convicted offenders and registered sex offenders in the Bill is also important because this will ensure that repeat offenders are identified more quickly in investigations, and may reduce the rate of recidivism in the country.</p>	Supports the Bill
DNA/25	<p>Tanya Mottalini</p>	<p>Rape can be prevented using DNA evidence in terms of repeat offenders. The DNA Database is a powerful crime-fighting tool.</p>	Supports the Bill
DNA/26	<p>Mike Voortman (Chairman of the Constantia Valley Watches</p>	<p>Submits that the organisation represents over 20 000 households in their community and like to voice their support for the DNA Bill to be passed into Law.</p>	Supports the Bill



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	Association - CVWA)		
DNA/27	John Slabber	Submits that the Bill should go ahead as there is a need to reduce crime. Further submits that pressure should be placed on the integration of the fingerprint database from the Department of Home Affairs so that the SAPS can check the fingerprints of all citizens.	Supports the Bill
DNA/28	Nicole Kaplan Clause 6: Section 15L	Submits that all SAPS members should provide a DNA sample to be included as a DNA profile on a separate index and not the Elimination Index. This will act as a deterrent to those officers who might otherwise be persuaded to commit crime. This should be seen as an act of goodwill by the SAPS to build public trust.	Supports the Bill
DNA/29	Ute Beurkle	Supports the Bill in order to make sure that DNA of offenders can be collected.	Supports the Bill
DNA/30	Dee Knights	Supports the passing of the Bill in order to put criminals behind bars and not the innocent.	Supports the Bill
DNA/31	Francois Viljoen	Submission supports the DNA Project and submitted similar issues as Susan Lynch in terms of training for first respondents and the balance struck between the rights of citizens and the right of Government to solve crime.	Supports the Bill <i>(Similar to Susan Lynch)</i>
DNA/32	Jeremy and Mark Tinker	In favour of the DNA database to help fight crime, that is overpowering the country.	Supports the Bill
DNA/33	Lisa van Heerden	Submits that the Bill is the best way for our country to move forward and catch those who commit heinous crimes against others.	Supports the Bill
DNA/34	Sean Hensman	The establishment of a DNA Database will improve crime rates and will put all criminals behind bars. This will be money well spent	Supports the Bill
DNA/35	Carol Wolfaardt	Submission supports the issues raised by the DNA Project.	Supports the Bill
DNA/36	Marise Heyns (UCT: Division of Forensic Medicine, Faculty	Welcomes the introduction of the Criminal Law (Forensics Procedures) Bill into Parliament and support its promulgation into law as a matter of extreme urgency to help fight crime in our country. The passing of this Bill, in its current form, into law will help identify serial offenders at an early	Supports the Bill Will do an oral presentation if invited to



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	of Health Sciences)	<p>stage of the investigation as well as link perpetrators to their crimes through an objective and reliable science. It will also ensure that the innocent are exonerated.</p> <p>In order to ensure the successful implementation of this legislation, I believe that First-on-crime scene police investigators, as well as key personnel involved in crime scenes, including the private security and emergency services sector, must be trained in how to identify, collect and preserve DNA evidence at crime scenes, so that critical evidence can be collected and fewer cases will be at risk of being jeopardised due to the mishandling of evidence. In addition, officers of the courts must be educated in how DNA evidence technology works to corroborate a case against a suspect or exonerate a suspect quickly, thereby decreasing delays in court.</p>	<i>(Similar to the submission by Susan Lynch)</i>
DNA/37	Jen van der Munckhof	Submission supports the DNA Project and submitted similar issues as Susan Lynch in terms of training for first respondents and the balance struck between the rights of citizens and the right of Government to solve crime.	Supports the Bill Survivor of Crime, will do an oral presentation if invited
DNA/38	Mark Reitz	Submits that section 15Q does not specifically mention the period for expungement regarding the Offender Index. It is suggested that this period be at least 20 to 30 years to cover the offender's likely lifespan or at least his/her "criminal career".	Supports the Bill
	Clause 6: Section 15Q	International co-operation: Positive step towards crime fighting across borders which is becoming more and more necessary. Unsure as to what "the obligations of the Republic" refers to but trust that it will not impede this section unnecessarily.	Supports the Bill
DNA/39	Professor Jacqueline Machabeis	Endorses the provisions contained in the DNA Bill in terms of appropriate and relevant entry of arrestees and convicted offenders DNA profiles onto the DNA database, the appropriate oversight and monitoring of the Database. This would allow me to keep alive the hope for justice, even if	Supports the Bill Victim of Crime and willing to provide a



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		the likelihood of the perpetrators being caught for another offense remains slim. This would allow all victims to regain a sense of worthiness. This would allow activists of countless NGOs to improve on their performance while they bravely face the hardship of constant denial from the authorities.	personal representation about her experience as a victim
DNA/40	Lee Ah Kun Clause 6: Section 15Y	Submission supports the DNA Project and submitted similar issues as Susan Lynch in terms of training for first respondents and the balance struck between the rights of citizens and the right of Government to solve crime.	Supports the Bill Asked not to make his contact details public.
DNA/41	Siegfried Rousseau (Orange Works)	The DNA database will allow different crime scenes to be linked to each other to assist with the investigation. It will also allow the crime scenes to be linked to individuals who were present at the crime scene in the quickest and most effective way. I am sure that nobody needs to point out how much money our country would save by solving these crimes quicker and even by preventing more of these violent crimes.	Supports the Bill Will do an oral presentation if invited
DNA/42	Susan Lynch	Raised issues identified by the DNA Project.	Supports the Bill
	Training	First-on-crime scene police investigators, as well as key personnel involved in crime scenes, including the private security and emergency services sector, must be trained in how to identify, collect and preserve DNA evidence at crime scenes, so that critical evidence can be collected and fewer cases will be at risk of being jeopardised due to the mishandling of evidence. In addition, officers of the courts must be educated in how DNA evidence technology works to corroborate a case against a suspect or exonerate a suspect quickly, thereby decreasing delays in court.	
	Clause 1: Section (1)(b)	Support the provision that trained Police Officers be allowed to take non-intimate DNA samples from arrestees and convicted offenders. The collection of a non-intimate DNA sample by a specially trained police officer from an arrestee or convicted offender ensures that a sample is quickly and easily uplifted. The “invasiveness” of the methods of obtaining DNA samples (rubbing a swab around the persons mouth, or obtaining a	



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		drop or two of blood from a pin-prick to a finger), are no different to having a breathalyser taken on suspicion of drunken driving.	
	Clause 2: Section 36D(1)	Endorses the provision that makes it mandatory to take DNA samples from suspects at the time of arrest and believe that it should extend to all arrestees and not just those arrested for schedule one offence. Supports that all convicted offenders DNA samples are taken retrospectively and before they are released from prison.	
	Clause 6: Section 15F(c)	Support the fact that the Bill does not only a tool for gathering inculpatory evidence, but also gathering of exculpatory evidence to appropriately eliminate suspects and so safeguards against wrongful convictions.	
	Clause 6: Sections 15H-L	The creation of separate indexes ensures that DNA profiles are appropriately stored and managed.	
	Clause 6: Section 15Y	Welcomes the establishment of an oversight Board to monitor the implementation of the legislation.	
DNA/43	Kusha Kalideen	DNA profiles obtained from criminals can be added into a database allowing repeat offenders to be identified and convicted on all their crimes, as opposed to the single crime they are arrested for. Larger DNA databases were associated with lower crime rates from 2000 to 2008, according to a recent study by Doleac (2012) in the United States of America. Due to the high recidivism rate in South Africa, the probability of arresting a suspect in new crimes will fall significantly, as our National DNA Database will grow. Currently the SAPS FSL is a state of the art laboratory capable of Database because it has been shown that the greater the number of DNA Profiles on the Database, the greater the chance of solving crimes and catching criminals.	Supports the Bill
DNA/44	Brian A. Thompson	The submission refers to the DNA Project. The submitter has personal experience with violent crime. The case he is referring to has not yet been brought to court due to a lack of evidence. The submitter believes that it could have been different if proper forensic procedures were followed at	Supports the Bill



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		the crime scene.	
DNA/45	Sean Davison (UWC)	The submission provided statistics on the high incident rate of rape and sexual assault in South Africa. The submitter believes that the implementation of a DNA database will make it possible to remove rapists and murderers from our society before they become repeat offenders.	Supports the Bill